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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/883,590      | 06/18/2001  | Renee Frengut        | 3313/01334          | 1985             |
| 7590            | 02/08/2005  |                      | EXAMINER            |                  |
|                 |             |                      | BOYCE, ANDRE D      |                  |
|                 |             |                      | ART UNIT            | PAPER NUMBER     |
|                 |             |                      | 3623                |                  |

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*Office Action Summary*

|                              |                 |                |
|------------------------------|-----------------|----------------|
| <i>Office Action Summary</i> | Application No. | Applicant(s)   |
|                              | 09/883,590      | FRENGUT, RENEE |
| Examiner                     | Art Unit        |                |
| Andre Boyce                  | 3623            |                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 08 November 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,5,7,10-18,21,22,24-26 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,5,7,10-18,21,22,24-26 and 32-39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. This Final office action is in response to Applicant's amendment and declaration filed November 8, 2004. Claims 1, 5, 7, 10, 12-14, 16, 17, 21, and 22 have been amended. Claims 2-4, 6, 8, 9, 19, 20, 23, and 27-31 have been canceled. Claims 32-39 have been added. Claims 1, 5, 7, 10-18, 21, 22, 24-26 and 32-39 are pending.
2. The previously pending objection to claims 12 and 21 have been withdrawn.
3. Applicant's arguments with respect to claims 1, 5, 7, 10-18, 21, 22, 24-26 and 32-39 have been considered but are moot in view of the new ground(s) of rejection, necessitated by Applicant's amendment.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the set of candidates". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 7, 10-13, 15-18, 21, 22, 25-26, and 32-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis (USPN 6,256,663).

As per claim 1, Davis discloses a method for conducting a market research study (e.g., focus group that allow companies to test market new products, column 1, lines 15-21) over a distributed network with one or more participants (i.e., focus group discussion among participants, column 3, lines 44-47), said method, comprising, the steps of: (a) selecting one or more participants for a market research study (obtaining and selecting potential respondents, column 4, lines 57-61); (b) selecting a moderator for conducting the market research study (moderator computer interface 344, figure 1); (c) providing each of said one or more participants and said moderator with an audio/video capture mechanism (e.g., text and graphically representations, including photographs and images, column 4, lines 6-9, and audio and video files, column 6, lines 14-16) that is connectable to a machine that permits two-way communication across a distributed computer network (i.e., invited respondents participate in chat discussion, wherein input devices include

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microphone and camera as input devices, column 3, lines 65-67) and capturing audiovisual two way communications between and among the participants and between and among the participants and the moderator (i.e., online focus group where participants are remotely located from one another and are interconnected by network 360, column 4, lines 45-50); (d) conducting a market research study over the distributed network by acquiring audiovisual communication data and responses from the participants based on questions asked by the moderator to the participants over the distributed network (e.g., moderator leads discussion by posting graphics for display to solicit responses, column 6, lines 10-13).

As per claim 7, Davis discloses the additional conducting step of displaying a stimulus to the participants across the distributed network and, receiving participant response to the stimulus across the distributed network (e.g., moderator post graphics for display to solicit respondent responses, column 6, lines 10-13).

As per claims 10 and 15, Davis disclose the additional step of officiating a follow-up interview with a participant, wherein the moderator displays additional stimulus and receives additional participant response in response to the additional stimulus (e.g., moderator provides additional questions and/or information provided to the respondent, column 6, lines 63-67).

As per claim 11, Davis discloses the additional step of disseminating information between the set of candidates and a client at the given time (e.g., window 190 allows a client to view all of the respondent chat messages, column 6, lines 23-26).

As per claim 12, Davis discloses method for conducting a market research study from a host machine over a distributed network (i.e., focus group discussion, including a client computer 320 and a moderator computer 340, figure 1), comprising, the steps of: selecting a set of candidates to participate in a market research study (i.e., obtaining and selecting potential respondents, column 4, lines 57-60), inviting the set of candidates to the market research study conducted during a predetermined time interval and conducted over a distributed network (i.e., message sent to each successfully screened respondent, including the date and time of the focus group, column 5, lines 25-27), wherein the candidates access the host and/or each other using a respective user machine interface having an audio/video two-way communication mechanism connected thereto (e.g., text and graphically representations, including photographs and images, column 4, lines 6-9, and audio and video files, column 6, lines 14-16), wherein each user machine is located geographically remote from the host (i.e., participants are remotely located from one another and are interconnected by network 360, column 4, lines 45-50), initiating two-way audio/video communication between and among the host and/or the geographically remote user machines with at least a set of participants comprising a first portion of the set of candidates (e.g., respondent logs into designated chat room via network 360 with respondent interface 160, column 5, lines 46-49), during the predetermined time interval in substantially real time (i.e., chat discussion); exhibiting over the distributed network a stimulus to the participants (e.g., moderator post graphics for display to solicit respondent responses, column 6,

lines 10-13); and accumulating participant responses to the stimulus over the distributed network at the host (e.g., respondent chat messages are stored in database 100, figure 7).

As per claim 13, Davis discloses verifying a presence of each participant throughout the market research study (e.g., monitoring the participants in the chat room).

As per claim 16, Davis discloses the additional step of selecting groups of participants for a predetermined stimulus, wherein the predetermined stimulus is shown to the participant group (e.g., stimulus could include a graphic representing a new product).

As per claim 17, Davis discloses the additional step of dynamically selecting a particular stimulus for transmission over the distributed network to the participants in response to prior participant responses (e.g., client may modify or alter the direction of the focus group or suggest additional stimuli, column 6, lines 61-65).

As per claim 18, Davis discloses the additional step of tabulating results of the market research study (respondent messages transmitted and stored in database 100, column 8, lines 36-38).

Claim 21 is rejected based upon the rejection to claim 12, since it is the system claim corresponding to the method claim.

As per claim 22, Davis discloses a sponsoring client device having distributed network access wherein a sponsoring client accessing the market research study at a given time observes the submitted moderator stimuli, the submitted user

responses and audio/video two-way communications between and among one or more users and the moderator (i.e., client viewing the client interface 180 may view all of the respondent messages exchanged between the moderator and the plurality of respondents, column 6, lines 22-25).

As per claims 25-26, Davis discloses a user working from the user device conducts two-way audiovisual communications with one or more users (e.g., respondents in focus group), and observes a set of submitted participant responses (e.g., plurality of respondent chat messages are displayed, column 5, lines 60-63).

As per claim 32, Davis discloses said participants are selected from a group of candidates (i.e., focus group provider searches respondent database and pre-qualifies those respondents who meet the qualifications, column 5, lines 4-7).

As per claim 33, Davis discloses transmitting the audiovisual market research study to a client who has selected the moderator to conduct the market research study (i.e., client interface 180, column 6, lines 17-21).

As per claim 34, Davis discloses transmitting is a substantially real time transmission of the market research study over the distributed network to a client's device in communication with the distributed network (i.e., client chat message window 182, column 6, lines 17-21).

As per claim 35, Davis discloses recording an audiovisual record of the market research study and delivering the audiovisual record to the client (e.g., respondent and moderator messages are stored in database 100).

As per claim 36, Davis discloses a number of candidates selected being fewer than all candidates available for selection (pre-qualified respondents).

As per claims 37-39, Davis discloses a distributed computer network (network 360, column 4, lines 45-50).

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
9. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (USPN 6,256,663), in view of Thomas (US 2002/0002482).

As per claims 5 and 14, Davis does not disclose paying each participant a first sum for participating in the market research study; and, paying a non-selected remainder portion of the candidates a second sum which is less in monetary amount than the first sum. Thomas discloses offering incentives to registered participants, including money (¶ 0029), wherein non-registered participants would not receive any incentive (i.e., money), which is less than what registered participants would receive. Both Davis and Thomas are concerned with effective market research via electronic means, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include incentives for the respondents in Davis, thereby making participation more attractive to the plurality of potential respondents.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (USPN 6,256,663).

As per claim 24, Davis does not explicitly disclose a user working from the user device observes an audiovisual image of the user. However, Davis discloses the respondent computer including a microphone 306C and camera 306D for use as input devices (figure 1). Further, Davis discloses the respondent messages including text or graphical representations, including photograph and images. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an image of the user in Davis, thereby providing the moderator and client with additional information about the respondent, making the research study more effective.

#### ***Response to Arguments***

11. In the Remarks, Applicant argues that Brock does not teach several of the Applicant's limitations. The Examiner submits that Davis and Davis in view of Thomas indeed disclose Applicant's invention, as seen in the above rejections.

#### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*ADB*  
adb  
January 31, 2005

*Susanna Diaz*  
SUSANNA M. DIAZ  
PRIMARY EXAMINER  
*AU3623*